

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 162**

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**Introduced by Assembly Member Holden**

January 23, 2013

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~~An act to amend Section 65584 of the Government Code, relating to land use. An act to add Section 65964.5 to the Government Code, relating to telecommunications facilities.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Holden. ~~Land use; housing element. Wireless telecommunications facilities.~~

*The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, and open space. Existing law, the federal Middle Class Tax Relief and Job Creation Act of 2012, prohibits a state or local government from denying an eligible facilities request, as defined, for a modification of an existing wireless tower or base station that does not substantially change the tower or base station.*

*This bill would prohibit a local government from denying an eligible facilities request, as defined, for a modification of an existing wireless telecommunications facility that does not substantially change the physical dimensions of the wireless telecommunications facility, as specified. The bill would require a local government to act on an eligible facilities request within 45 days of receipt of a request, as specified. The bill would prohibit a local government from requiring proof of gap in coverage as part of the approval of an eligible facilities request. By*

*adding to the duties of a local government, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan that includes various mandatory elements, including a housing element. That law requires the housing element to contain, among other things, an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. That law further requires the Department of Housing and Community Development to determine the existing and projected need for housing for each region, as specified.~~

~~This bill would make technical, nonsubstantive changes to that law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 65964.5 is added to the Government Code,
- 2     to read:
- 3     65964.5. (a) Notwithstanding any other law, and pursuant to
- 4     Section 6409 of the federal Middle Class Tax Relief and Job
- 5     Creation Act of 2012 (47 U.S.C. Sec. 1455), a local government
- 6     shall approve and may not deny any eligible facilities request for
- 7     a modification of an existing wireless telecommunications facility
- 8     that does not substantially change the physical dimensions of the
- 9     wireless telecommunications facility.
- 10    (b) The failure to act on an eligible facilities request within 45
- 11    days of receipt of a request shall be deemed an approval of the
- 12    request. The 45 days shall be tolled if the request is determined to
- 13    be incomplete. If the request is determined to be incomplete, the
- 14    local government shall comply with subdivision (c) of Section
- 15    65943 of the Government Code.

1     (c) A local government shall not require proof of gap in  
2 coverage as part of the approval of an eligible facilities request.

3     (d) For purposes of this section, the following definitions shall  
4 apply:

5     (1) “Eligible facilities request” or “request” means any request  
6 for modification of an existing wireless telecommunications facility  
7 that involves any of the following:

8         (A) Collocation of upgraded transmission equipment.

9         (B) Removal of transmission equipment.

10        (C) Replacement of transmission equipment.

11     (2) “Substantially change” means any of the following:

12         (A) The mounting of the proposed antenna on the wireless  
13 telecommunications facility would increase the existing height of  
14 the wireless telecommunications facility by more than 10 percent,  
15 or by the height of one additional antenna array with separation  
16 from the nearest existing antenna not to exceed 20 feet, whichever  
17 is greater, except that the mounting of the proposed antenna may  
18 exceed the size limits set forth in this subparagraph if necessary  
19 to avoid interference with existing antennas.

20         (B) The mounting of the proposed antenna would involve the  
21 installation of more than the standard number of new equipment  
22 cabinets for the technology involved, not to exceed four equipment  
23 cabinets, or more than one additional equipment shelter.

24         (C) The mounting of the proposed antenna would involve adding  
25 an appurtenance to the body of the wireless telecommunications  
26 facility that would protrude from the edge of the wireless  
27 telecommunications facility more than 20 feet, or more than the  
28 width of the wireless telecommunications facility at the level of  
29 the appurtenance, whichever is greater, except that the mounting  
30 of the proposed antenna may exceed the size limits set forth in this  
31 subparagraph if necessary to shelter the antenna from inclement  
32 weather or to connect the antenna to the wireless  
33 telecommunications facility via cable.

34         (D) The mounting of the proposed antenna would involve  
35 excavation outside the current wireless telecommunications facility  
36 site, defined as the current boundaries of the leased or owned  
37 property surrounding the wireless telecommunications facility and  
38 any access or utility easements currently related to the site.

39     (3) “Wireless telecommunications facility” means equipment  
40 and network components, including towers, utility poles,

1 *transmitters, base stations, and emergency power systems that are*  
2 *integral to providing wireless telecommunications services.*

3 *SEC. 2. If the Commission on State Mandates determines that*  
4 *this act contains costs mandated by the state, reimbursement to*  
5 *local agencies and school districts for those costs shall be made*  
6 *pursuant to Part 7 (commencing with Section 17500) of Division*  
7 *4 of Title 2 of the Government Code.*

8 ~~SECTION 1. Section 65584 of the Government Code is~~  
9 ~~amended to read:~~

10 ~~65584. (a) (1) For the fourth and subsequent revisions of the~~  
11 ~~housing element pursuant to Section 65588, the department shall~~  
12 ~~determine the existing and projected need for housing for each~~  
13 ~~region pursuant to this article. For purposes of subdivision (a) of~~  
14 ~~Section 65583, the share of a city or county of the regional housing~~  
15 ~~need shall include that share of the housing need of persons at all~~  
16 ~~income levels within the area significantly affected by the general~~  
17 ~~plan of the city or county.~~

18 ~~(2) While it is the intent of the Legislature that cities, counties,~~  
19 ~~and cities and counties should undertake all necessary actions to~~  
20 ~~encourage, promote, and facilitate the development of housing to~~  
21 ~~accommodate the entire regional housing need, it is recognized,~~  
22 ~~however, that future housing production may not equal the regional~~  
23 ~~housing need established for planning purposes.~~

24 ~~(b) The department, in consultation with each council of~~  
25 ~~governments, shall determine each region's existing and projected~~  
26 ~~housing need pursuant to Section 65584.01 at least two years prior~~  
27 ~~to the next scheduled revision required pursuant to Section 65588.~~  
28 ~~The appropriate council of governments, or for cities and counties~~  
29 ~~without a council of governments, the department, shall adopt a~~  
30 ~~final regional housing need plan that allocates a share of the~~  
31 ~~regional housing need to each city, county, or city and county at~~  
32 ~~least one year prior to the scheduled revision for the region required~~  
33 ~~by Section 65588. The allocation plan prepared by a council of~~  
34 ~~governments shall be prepared pursuant to Sections 65584.04 and~~  
35 ~~65584.05 with the advice of the department.~~

36 ~~(c) Notwithstanding any other provision, the due dates for the~~  
37 ~~determinations of the department, or for the council of~~  
38 ~~governments, respectively, regarding the regional housing need~~  
39 ~~may be extended by the department by not more than 60 days, if~~  
40 ~~the extension will enable access to more recent critical population~~

1 or housing data from a pending or recent release of the United  
2 States Census Bureau or the Department of Finance. If the due  
3 date for the determination of the department or the council of  
4 governments is extended for this reason, the department shall  
5 extend the corresponding housing element revision deadline  
6 pursuant to Section 65588 by not more than 60 days.

7 (d) ~~The regional housing needs allocation plan shall be~~  
8 ~~consistent with all of the following objectives:~~

9 (1) ~~Increasing the housing supply and the mix of housing types,~~  
10 ~~tenure, and affordability in all cities and counties within the region~~  
11 ~~in an equitable manner, which shall result in each jurisdiction~~  
12 ~~receiving an allocation of units for low- and very low income~~  
13 ~~households.~~

14 (2) ~~Promoting infill development and socioeconomic equity;~~  
15 ~~the protection of environmental and agricultural resources, and~~  
16 ~~the encouragement of efficient development patterns.~~

17 (3) ~~Promoting an improved intraregional relationship between~~  
18 ~~jobs and housing.~~

19 (4) ~~Allocating a lower proportion of housing need to an income~~  
20 ~~category when a jurisdiction already has a disproportionately high~~  
21 ~~share of households in that income category, as compared to the~~  
22 ~~countywide distribution of households in that category from the~~  
23 ~~most recent decennial United States census.~~

24 (e) ~~For purposes of this section, “household income levels” are~~  
25 ~~as determined by the department as of the most recent decennial~~  
26 ~~census pursuant to the following code sections:~~

27 (1) ~~Very low incomes as defined by Section 50105 of the Health~~  
28 ~~and Safety Code.~~

29 (2) ~~Lower incomes, as defined by Section 50079.5 of the Health~~  
30 ~~and Safety Code.~~

31 (3) ~~Moderate incomes, as defined by Section 50093 of the Health~~  
32 ~~and Safety Code.~~

33 (4) ~~Above moderate incomes are those exceeding the~~  
34 ~~moderate-income level of Section 50093 of the Health and Safety~~  
35 ~~Code.~~

36 (f) ~~Notwithstanding any other determinations made by the~~  
37 ~~department, a council of governments, or a city or county pursuant~~  
38 ~~to this section or Section 65584.01, 65584.02, 65584.03, 65584.04,~~  
39 ~~65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the~~

- 1 California Environmental Quality Act (Division 13 (commencing
- 2 with Section 21000) of the Public Resources Code).

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